

1 Andrew J. Christensen (SBN: 260748)
Law Offices of Andrew J. Christensen, P.C.
2 2063 Mountain Blvd. Suite 2
Oakland, CA 94611
3 Tel: (510) 761-7183
Fax: (510) 680-3430
4 Andrew@CaliforniaHomeLawyer.com

5 Attorney for Debtor Melissa Wilkerson

6 UNITED STATES BANKRUPTCY COURT
7 NORTHERN DISTRICT OF CALIFORNIA

8 In the Matter of:

9 Melissa Wilkerson
10 Debtor _____

Bankruptcy Case: 25-40564 CN

Chapter 13

11 **Status Conference Statement on**
12 **Motion for Damages for Violation of**
13 **the Automatic Stay**

14 Hearing REMOTE OR IN PERSON

Date: October 3, 2025

Time: 11:00 a.m.

Place: Courtroom 215

1300 Clay Street, Oakland CA 94612

The Honorable Charles Novack

16
17 Melissa Wilkerson hereby files this Status Conference Statement regarding her
18 *Motion for Damages for Violation of the Automatic Stay* against NewRez LLC dba
19 Shellpoint Mortgage Servicing, NBS Default Services, LLC, ("NBS") and Good
20 Neighbor Homes LLC, ("GNH") (jointly "Creditors") for proceeding with a foreclosure
21 sale in violation of the automatic stay.

22 This Court held a hearing on September 12, 2025, to discuss the Parties'
23 positions on whether further discovery is necessary and whether there were disputes
24 of fact. Respondent Creditors asked for three weeks to discuss the matter and
25 determine if the parties could agree to undisputed facts.

26 Debtor's statement filed before the prior hearing, docket 75, identified several
27 facts at issue and identified the problem that some of Respondents statements are
28 facts, and some appear to be counterfactual arguments, including on the issue of when

1 the foreclosure sale was deemed final, whether there is evidence to support Shellpoint's
2 estoppel argument, whether a TDUS was issued, and whether there is evidence to
3 support arguments about why the sale was cancelled.

4 The parties met and conferred about the issues by email and phone. Debtor
5 proposed certain stipulated facts to resolve the issues identified at the hearing. Each
6 Respondent submitted a list of proposed stipulated facts that essentially mirrored the
7 arguments in their briefs.

8
9 A. Respondents Did Not Identify Additional Evidence They Have or That They
10 Want

11 During the meet and confer, Debtor asked Respondents if they had any
12 additional evidence to produce or present on the issues to determine if Debtor needed
13 to conduct any further discovery. No Respondent claimed to have any further evidence
14 on any of the issues raised by Debtor. Therefore, it appears that there is no further
15 evidence for Debtor to obtain in discovery relating to the issues raised in Debtor's brief
16 docket 75.

17 Debtor asked Respondents if they wanted any further evidence from Debtor, and
18 no Respondent said that they had any evidence or discovery they wanted from Debtor.

19
20 B. Undisputed Facts

21 On October 1, 2025, docket 80, Respondents Shellpoint, NBS, and GNH jointly
22 submitted a *Statement of Position on Undisputed Facts or Facts Not Reasonably*
23 *Subject to Dispute*. Debtor disputes many of the alleged proposed undisputed facts
24 and parts of them. However, Debtor does not dispute the following facts set forth in
25 Respondents' statement Docket 80:

26 4. A notice of intent to bid pursuant to Civil Code section
27 2924m(c)(2) was timely received by NBS Default before the 15th
28

1 day after April 1, 2025.

2 5. The bidding process required by Civil Code section
3 2924m(c)(4) remained open for 45 days from April 1, 2025 until
4 May 16, 2025, at 5:00 pm.

5 6. No additional bids were received during the 45-day
6 period.

7 7. On May 7, 2025 NBS Default sent an email to Debtor's
8 counsel regarding its position that the sale was conducted at
9 9:14 am, prior to what it thought was the petition date and filing
10 time.

11 11. On May 22, 2025, the debtor filed and mailed a Motion
12 for Damages for Violation of the Automatic Stay, alleging that
13 her bankruptcy was filed at 9:06 a.m. on April 1, 2025.

14 15. No Trustee's Deed Upon Sale for the property was
15 recorded in the Official Records of Contra Costa County after
16 May 16, 2025.

17
18 Many of the remaining proposed facts in Respondents' Statement, Docket 80,
19 are objectionable in part because of the improper and misleading use of certain words
20 and adjectives that create confusion, but would be acceptable with different wording.
21 These go to some of the issues identified in Debtor's Status Conference Statement on
22 facts (docket 75), and will be discussed herein below.

23
24 C. When the Foreclosure Sale was Deemed Final

25 The Court will need to make the factual finding that the foreclosure auction was
26 deemed final by NBS on May 19, 2025, after the 45th day, and not on April 1, 2025, the
27 day the auction started. On this issue, it appears that no further evidence or discovery
28

1 is necessary and the Court can resolve it on the evidence presented.

2 Respondents' proposed undisputed fact number 1 states "The foreclosure
3 auction described in the Notice of Trustee's Sale was conducted on April 1, 2025" is
4 inaccurate because the word "conducted" should be replaced with "began" because the
5 auction opened on April 1, but closed 45 days later on May 16, therefore being
6 "conducted" over a 45-day period, not on April 1 and Respondents admit bidding stayed
7 open for 45 days. "Conducted" gives the impression that the foreclosure began and
8 ended on April 1, which is not accurate. It is undisputed that the foreclosure auction
9 began on April 1, and undisputed that the auction stayed open for bidding for 45 days.
10 Respondents did not offer any evidence that the auction completed on April 1, and did
11 not say that they had any additional evidence on this point.

12 Respondents proposed undisputed fact number 2 states "The bid funds of GNH
13 in the amount of \$499,799.40 were accepted as the high bid at 9:14 a.m. on April 1,
14 2025." This is agreeable except that the word "accepted" should be replaced with
15 "received" because the word "accepted" has very specific meaning within §2924m and
16 §2924h as being the point in time that the sale is deemed final by the act of the trustee
17 in identifying and "accepting" the high bid after bidding closes after 45 days. It is
18 undisputed that GNH gave this money to NBS that day, and the issue is simply with
19 the characterization of the transaction. Respondents' use of the word "accepted" here
20 is not a fact, but an argument based on inaccurate use of "accepted" in the general
21 sense meaning "received" and not in the specific statutory sense under §2924m and
22 §2924h, which is the primary issue in this case.

23 Section 2924h(c) states "For the purposes of this subdivision, the trustee's sale
24 shall be deemed final upon the acceptance of the last and highest bid[.]" (emphasis
25 added). Under California law "an acceptance of an offer must be communicated to the
26 offeror to become effective. (Civ. Code, § 1565, [citations]."
27 *Drouin v. Fleetwood Enters.*, 163 Cal. App. 3d 486, 491 (1985). Therefore, "acceptance" within the meaning of
28

1 §2924m and §2924h has specific meaning and occurs when the trustee NBS identifies
2 the highest bid after the close of bidding and communicates that to the high bidder.
3 This is the equivalent of an auctioneer dropping the hammer and saying “sold” at the
4 auction. Here, NBS admits that it reviewed the file on May 19, 2025, after the 45th
5 day and determined no other bids came in, and determined the high bid was from
6 GNH, and communicated that to GNH that same day. [Respondents Proposed Facts 8,
7 9].

8 Respondents proposed undisputed fact 8 states “On May 19, 2025, NBS Default
9 confirmed that no other bid funds had been received and determined that GNH
10 remained the high bidder.” This would be acceptable as a fact except as to the word
11 “remained” the high bidder, because the word should be “was” the high bidder, because
12 the truth is that the high bidder was identified and determined and accepted only on
13 that day May 19 based on the undisputed fact that bidding stayed open for 45 days
14 and communication of the acceptance happened on May 19, the same day NBS
15 reviewed the file to identify the high bid for the first time after the close of bidding.
16 Therefore, the Court can make the finding in this case that NBS accepted the high bid
17 and deemed the sale final within the meaning of the statute based on the undisputed
18 facts that NBS reviewed the file and identified the high bid and communicated the
19 acceptance to GNH on May 19, 2025. There is no other evidence on this issue for
20 discovery.

21 These undisputed facts establish that NBS “accepted” the GNH bid as the high
22 bid on May 19, 2025, thereby deeming the sale final within the meaning of §2924m
23 and §2924h. This is the finding that this Court must make on this Motion regarding
24 “acceptance” and when the sale was “deemed final” which the Court can do on the
25 undisputed facts identified here.

26 During meet and confer Respondents would not specifically confirm that they
27 deemed the sale final on April 1 within the meaning of §2924m and §2924h rather than
28

1 deeming the sale final on May 19. However, NBS and Shellpoint admit that NBS
2 communicated to GNH for the first time on May 19 that they were the high bidder of
3 the foreclosure sale. This fact precludes a finding by this Court that the sale was
4 deemed final on April 1.

5 Under §2924m(c) the "trustee's sale [...] shall not be deemed final until" the
6 45th day at 5 pm as admitted by Respondents. Respondents all take the position that
7 they complied with §2924m and §2924h, which means that they did not actually deem
8 the sale final by accepting the high bid on April 1. That would be impossible
9 considering they propose the undisputed fact that the 45-day timeframe applied for
10 receiving bids, they kept the bidding open for that time, reviewed the file after 45 days,
11 and first communicated to the high bidder after the 45th day. On these truly undisputed
12 facts, the only conclusion that can be drawn is that the foreclosure sale was "deemed
13 final" within the meaning of §2924h by NBS when NBS "accepted" the bid of GNH as
14 the final high bid on May 19, 2025, communicating the acceptance that day.

15 The Court will need to make the factual finding that NBS deemed the sale final
16 on May 19 by accepting and communicating the acceptance to GNH within the
17 meaning of §2924m and §2924h because the issue in the Motion for Sanctions for
18 Violation of the Automatic Stay depends on actions being taken by Respondents after
19 they had notice of the bankruptcy case. Here, these undisputed actions include that
20 Respondents kept bidding open for 45 days expressly refusing to close it in letters they
21 sent to Debtor's counsel, and that they took the action of reviewing the file and
22 identifying the high bidder, accepted the high bid, and communicating their acceptance
23 to GNH on May 19, 2025, 48 days after they had notice of the bankruptcy and had been
24 asked to stop.

25
26 D. Facts Related to Estoppel

27 Shellpoint argues that it rescinded the foreclosure sale "immediately" upon
28

1 learning of the 9:06 am filing time. Shellpoint argues that it “expressly relied on the
2 9:19 a.m. filing time to its injury.” Shellpoint argues that “Debtor clearly intended that
3 SMS act on the 4/11/2025 Demand Letter and the 9:19 a.m. filing time by demanding
4 a rescission of the Foreclosure Sale based on the 9:19 a.m. filing time.” These are all
5 allegations of fact by counsel without any evidentiary support by declaration or
6 documents. Debtor asked if Shellpoint had any additional evidence to support these
7 facts, but Shellpoint did not respond that it had any additional evidence, therefore no
8 further discovery is needed.

9 Therefore, Debtor’s position is that they are not legitimate issues of fact that
10 require discovery or an evidentiary hearing and the Court may simply make the factual
11 findings that Shellpoint rescinded the completed foreclosure sale to avoid litigation
12 risks as set forth in the extensive email correspondence, and that Shellpoint did not
13 rely on the 9:19 filing time to its injury when refusing to cancel the foreclosure sale
14 because arguments of counsel are not evidence, and that Debtor did not intend
15 Shellpoint to rely on the 9:19 filing time by refusing to cancel the sale because there is
16 no evidence of this and it is patently absurd.

17 On this basis the Court should reject the estoppel argument because there is no
18 evidence to support these claims and therefore these are not legitimate disputes of fact
19 that require discovery or an evidentiary hearing. Shellpoint has the burden to
20 establish these facts and failed to submit evidence or identify that it had any additional
21 evidence to support it.

22
23 E. The Reason Respondents Rescinded the Foreclosure Sale

24 The reasons that Respondents cancelled the foreclosure sale are material facts
25 for the Court to decide related to punitive damages because the evidence shows they
26 rescinded the sale out of fear of litigation, but Respondents’ counsel argues it was
27 rescinded upon learning of the 9:06 am filing time.

1 On this key issue no Respondent has any further evidence and there is no reason
2 for further discovery. Therefore, there is not a material dispute of fact on this issue,
3 and the emails and declarations and judicial admissions plainly establish Respondents
4 rescinded the foreclosure to avoid litigation exposure after this Motion was filed and
5 that the arguments of NBS and Shellpoint in their briefs that they cancelled the sale
6 upon learning of the 9:06 filing time when the Motion was filed are simply
7 unsubstantiated arguments of counsel that are plainly undermined by the extensive
8 email correspondence produced in discovery and attached to Debtor's Reply briefs
9 docket 55 and 60.

10
11 F. Trustees' Deed Upon Sale

12 There is a dispute of material fact as to whether a trustee's deed upon sale was
13 executed, or delivered by NBS, or received or accepted by GNH. It is undisputed that
14 no TDUS was recorded in the county recorders' office, but that does not mean it was
15 not executed and delivered. All three Respondents deny that there was a TDUS.
16 However, there are emails strongly suggesting that a TDUS was created and sent to
17 GNH as discussed in the Reply Briefs. The email **Exhibit H** previously submitted
18 shows that when NBS Counsel Michelle Mierzwa emailed GNH employee Olivia Reyes
19 on May 20, 2025, she said GNH was previously deemed the high bidder, and that the
20 TDUS needs to be recorded within 60 days, and suggests GNH "file an ex parte motion
21 for annulment/relief from stay regarding the recording of the Trustee's Deed" This
22 language strongly suggests a TDUS was issued because none of this language makes
23 any sense if no TDUS had been issued or accepted because the discussion would have
24 been about completing that step first. The fact that they suggest annulment of the stay
25 regarding the TDUS is because it was already issued and accepted.

26 Debtor asked GNH counsel by email to meet and confer about dates for a
27 deposition on the issue on September 11, but GNH has ignored the email.

1 There is a further disputed material fact about when GNH learned of the
2 bankruptcy case. GNH claims in its opposition brief that it first learned of the
3 bankruptcy on May 19, 2025, when NBS notified it of the acceptance of its bid as the
4 winning high bid. However, the email **Exhibit H** makes it clear that GNH learned
5 about the bankruptcy some time earlier than May 19 because Michelle Mierzwa states
6 "You indicated that you became aware of the bankruptcy filing at some point."
7 Obviously, GNH learned of the bankruptcy before May 19. Even if no TDUS was
8 issued or received by GNH, or if Respondents hide that evidence, the fact that GNH
9 learned of the bankruptcy case earlier than May 19, 2025, will show a willful violation
10 of the stay for not immediately cancelling the sale.

11 On September 11, Debtor asked GNH counsel to meet and confer about dates
12 for deposing Olivia Reyes about when she learned of the bankruptcy case, and about a
13 corporate designated witness on the date they first learned of the bankruptcy case, and
14 the PACER account information for all users so the Debtor can subpoena the records
15 to find out when GNH or its counsel first looked up the bankruptcy case, but GNH has
16 ignored the email.

17 Debtor's position is that the Court can find GNH liable on these facts without
18 further discovery, including for not taking affirmative action to cancel the sale
19 immediately upon learning of the bankruptcy case at some point before May 19. It is
20 clear that the evidence contradicts their narrative on when they learned of the
21 bankruptcy and whether a TDUS was issued, and that is enough to support a finding
22 against them, and it is apparent that further discovery will be expensive and contested
23 but will eventually establish the same facts already visible. Discovery will be hard
24 fought and require motions to compel all discovery because GNH's written responses
25 to requests for admission, interrogatories, and requests for production do not comply
26 with virtually any of the FRCP requirements and would require motions to compel
27 before any evidentiary hearing to ensure compliant responses are served to avoid any
28

surprises at trial with new evidence.

However, to the extent the Court finds this to be insufficient for liability as to GNH, Debtor will proceed with depositions to get to the bottom of whether a TDUS was executed, delivered, or accepted and when GNH first learned of the bankruptcy case.

However, the Court may enter an order on liability and damages as to the three Respondents separately, and find NBS and Shellpoint liable for their acts that violate the stay while discovery proceeds as to GNH. If NBS executed, issued, or delivered a TDUS that would also violate the stay, but the other violations are sufficient for liability, so it is unnecessary to delay ruling as to NBS and Shellpoint for discovery on the TDUS.

Date: October 1. 2025

/s/ Andrew J. Christensen

Andrew J. Christensen
Attorney for Melissa Wilkerson